

**IN THE ARMED FORCES TRIBUNAL, PRINCIPAL BENCH
AT NEW DELHI**

TA No.354/2010

[WP (Civil) No. 7530/2009 of Delhi High Court]

Rakesh KumarPetitioner

Versus

Union of India & OthersRespondents

For petitioner: Sh. S.M. Dalal, Advocate.

For respondents: Sh. Pratap Singh Parmar, Advocate.

CORAM:

**HON'BLE MR. JUSTICE A.K. MATHUR, CHAIRPERSON.
HON'BLE LT. GEN. M.L. NAIDU, MEMBER.**

ORDER

16.03.2010

1. Writ Petition No. 7530 of 2009 was filed by the petitioner in Delhi High Court on 18.03.2009. The petitioner vide this petition has prayed for quashing of the order of the Defence Ministry's Appellate Committee dated 23.07.2008 and has sought disability pension @ 20% with effect from 16.10.2006.

2. The petitioner was enrolled in the Indian Air Force on 19.12.2001. He was medically examined and found fit in all respects. Having successfully completing strenuous training at Belgaun and Chennai, he was again medically examined and declared Medical Category Shape-1.

3. The petitioner was posted to a forward Air Base in Gujarat near Indo-Pakistan border in February, 2003, which is a modified field area. The environment in the Air Base was operationally oriented and in that the petitioner was required to perform duties for very long hours with little rest. At times, he was required to perform duties at Operational Readiness Platform (ORP) which entailed staying awake for the whole night for 2-3 days during exercise which spanned over 4-5 days.

4. The petitioner got his first attack of the disease on 12.04.2005 which was diagnosed as "Schizophrenia". Thereafter, the petitioner was treated in various Military Hospitals. He was invalided out of service on 11.09.2006.

5. The case for sanction of disability pension was rejected by PCDA (P), Allahabad on the grounds that the disease was neither attributable nor aggravated by Military service. Petitioner's appeal to First Appellate Committee was rejected without reference to a Re-Survey Medical Board.

6. The petitioner filed a Writ Petition (C) No. 6127 of 2007 in the High Court of Delhi. The said petition was disposed of by a Division Bench of the Hon'ble Court with the directions that the Defence Minister's Appellate Committee shall decide the appeal with a speaking order within six months. The order was complied with on 23.07.2008. Aggrieved by the said order the present petition was filed which has been transferred to this Tribunal on its formation.

7. The learned counsel for the petitioner argued that the petitioner was medically fit in all respects at the time of enrolment as also on completion of one year long strenuous training. Therefore, the disease which appeared for the first time on 12.04.2005 is attributable to Military service. He referred to para

423 Regulations for Medical Services of the Armed Forces, 1982

which reads as under :-

“423 (c). The cause of a disability or death resulting from a disease will be regarded as attributable to Service when it is established that the disease arose during Service and the conditions and circumstances of duty in the Armed Forces determined and contributed to the onset of the disease cases in which it is established that Service conditions did not determine or contribute to the onset of the disease but influenced the subsequent course of the disease will be regarded as aggravated by the service. A disease which had led to an individual’s discharge or death will ordinarily be deemed to have arisen in Service if no note of it was made at the time of the individual’s acceptance for Service in the Armed Forces. However, if medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service.”

8. The learned counsel for the petitioner further argued that the petitioner was discharging operational type duties in a forward Air Base. He could therefore be governed by Rule 14 of Entitlement Rules for Casualty Pensionary Award, 1982 which read as under :-

“14. In respect of diseases, the following rule will be observed:-

(a) Cases in which it is established that conditions of Military Service did not determine or contribute to

the onset of the disease but influenced the subsequent courses of the disease will fall for acceptance on the basis of aggravation.

(b) A disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service, if no note of it was made at the time of the individual's acceptance for military service. However, if medical opinion holds, for reasons to be stated, that the disease could not have been detected on medical examination prior to acceptance for service, the diseased will not be deemed to have arisen during service.

(c) If a disease is accepted as having arisen in service, it must also be established that the conditions of military service determined or contributed to the onset of the disease and that the conditions were due to the circumstances of duty in military service."

9. The Rules further amplify at Appendix-II at para 4 to state that since the petitioner was invalided out on 11.09.2006, he should be considered under the said provision. The relevant extract states as under :-

"4. Invaliding from service is a necessary condition for grant of disability pension. An individual who, at the time of his release under the

Release Regulations, is in a lower medical category than that in which he was recruited will be treated as invalidated from service. JCO/OR and equivalents in other services who are placed permanently in a medical category other than 'A' and are discharged because no Alternative or Shelter Appointment can be provided, as well as those who having been retained in alternative employment but are discharged before the completion of their

engagement will be deemed to have been invalidated out of service.”

10. The learned counsel for the petitioner further argued his case is based on Modi's Medical Jurisprudence and Toxicology (P. 623) which states that

*“**Schizophrenia** : Kraepelin, in 1896, named this disease dementia praecox. In 1911, Eugen Blener introduced the term ‘Schizophrenia’ which literally means disintegration of mind. The term dementia praecox was changed because it implied that the disease always ended in dementia, which it did not. The term praecox meant that the disease developed at the time of puberty or adolescence, but in many cases developed outside that period. Since it was thought that the disease always ended in dementia, it meant a hopeless prognosis, which created a spirit of defeatism in the minds of the people.*

The cause of this illness is still not known but there is a general agreement about the multiplicity of factors in its causation. Heredity plays a part as shown by Kallmann's work. He found the expected incidence of schizophrenia in the relatives of schizophrenic patients to be as follows : monozygotic twins – 86%, dizygotic twins – 15%; children – 16%; full sibs – 14%; parents – 9%; half sibs – 7%; grand – children – 4%; nephews and nieces – 4%; marriage partners – 2%; general population – 0.85%.”

11. The learned counsel for the petitioner cited two judgments of Division Bench of Hon'ble Delhi High Court in the case of Gnr. Ved Prakash vs. Union of India in W.P. (C) No.18907

of 2006 dated 22nd April, 2008 and another in case of W.O. S.S. Gautam vs. Union of India & others in W.P. (C) Nos. 11698/2004, 13925/2006 and 6112/2006 dated 19.10.2006 in which in the absence of reasons for not having detected the disease at the time of enrolment the disease is deemed to be attributable to Military service. The learned counsel for the petitioner has also cited the judgment of this Bench in the case of Nakhat Bharti etc. etc. vs. Union of India & others in T.A. No. 48/2009 dated 28th October, 2009.

12. Learned counsel for the respondents stated that the petitioner was admitted in the hospital and treated for a prolonged period of eight months within a year. He was also granted sick leave but his condition did not improve. The place of posting of the petitioner was at Naliya (Bhuj) which did not involve any operational duties which could be categorised to have contributed towards the onset of the Invaliding Disease. The report of the Psychiatrist who had examined the petitioner clearly mentions that the disease in case of the petitioner is genetic. The Psychiatrist

has given a detailed account of his family circumstances and his opinion reads below :-

“OPINION :

This 24 years old serving IAF personnel with family h/o psychotic illness manifested with insidious onset of social withdrawal, self absorbed attitude, anhedonia, hearing voices commending about him, muttering to self, hypochondriacal and referential delusions, persecutory delusion, irrelevant talk, thought blocking, somatic preoccupations of 3-4 months duration while posted in Naliya in beginning of 2005. He had history of similarly episode 1-1/2 years ago treated in civil clinic. He responded to a typical antipsychotic but continued to have persistent symptomatology. The indl. was in hospital for over 8 months in last one year with deterioration in socio occupation functioning. His unit reports were consecutively non complimentary in Sep. 05, Feb. 06 and now in Apr. 06. He was put on Tab CLOZAPINE 300 mg/... day but continues to be prone to relapse in future. He has persistent deficit features impairing his daily activities and overall socio occupational role functioning.”

13. Learned counsel for the respondents further stated that the Defence Ministry's Appellate Committee has considered all the above factors before issuing the 'Speaking Order' on 23rd July, 2008. It is, therefore, evident that the disease is neither attributable nor aggravated by Military service in the Indian Air Force.

14. We have considered the arguments of both the sides. What begs a question is what are the causative factors for the disease 'Schizophrenia'? As per Modi's Medical Jurisprudence and Toxicology (p. 624) states:-

"The cause of this illness is still not known but there is a general agreement about the multiplicity of factors in its causation. Heredity plays a part as shown by Kallmann's work. He found the expected incidence of schizophrenia in the relatives of schizophrenic patients to be as follows : monozygotic twins – 86%, dizygotic twins – 15%; children – 16%; full sibs – 14%; parents – 9%; half sibs – 7%; grand – children – 4%; nephews and nieces – 4%; marriage partners – 2%; general population – 0.85%."

Many theories about its causation have been put forward from time to time but they have not stood the test of time. Auto-intoxication produced by a disordered secretion of the sex glands, atrophy of the sex glands and aplasia of the circulatory system, focal sepsis, endocrinal disturbances, disturbances of protein and carbohydrate metabolism of the brain cells, have all been held responsible for the causation of this mental disorder. Adolf Meyer's psycho-biological concept of schizophrenia is that schizophrenia is the result of progressive mal-adaption of the individual to the environment. The most modern concept of the etiology of schizophrenia are :-

- *Inborn defect in the metabolism of adrenalin or related compounds and deficiency of General Adaptation Syndrome of Selye;*
- *Biochemical 'lesion' in schizophrenia and search for an endotoxin or for multiple endotoxins produced through metabolic error;*
- *Production of schizophrenia-like symptoms by the administration of certain drugs like*

mescaline, d-lysergic acid diethylamide, etc.;
and

- *Finding antidotes for the disappearance of these symptoms.*

It is though that serotonin (5-hydroxytryptamine) in our brains plays an essential part in keeping us sane and that the effect of LSD is due to its inhibitory action on the serotonin in the brain.

15. In this case instant, family background which could be one of the causes is well established in the Psychiatrist's Report which formed the basis for the Invaliding Medical Board. Therefore, perhaps the symptoms of the disease were latent/dormant in the petitioner and was not detected during the medical examination at the time of enrolment and during training. The symptoms surfaced in April, 2005 when the petitioner was posted at the Air Force Base at Naliya.

16. The aspect assumes importance in view of para No. 423 (d) of the Regulation for Medical Services of the Armed Forces – 1982 under Attributability which states – *“However, if Medical opinion holds, for reasons to be stated that the disease could not have been detected on medical examination prior to acceptance for service, the disease will not be deemed to have risen during service”*

17. We are of the considered opinion that given the nature of the disease and causative factors that have been elaborated in great detail by the Psychiatrist in his analysis and opinion, which we obtained from the original Medical records, the invaliding Medical Board is justified in its recommendations and opinion regarding attributability of the disease. This Bench's Judgment in T.A. No. 48 of 2009, arising out of W.P. (C) No. 6324 of 2007 of Delhi High Court with T.A. No. 5 of 2009, 106 of 2009 and 36 of 2009 dated 28th October, 2009 has dilated on the similar issues and circumstances to arrive at a conclusion that where the Medical Board has given convincing reasons to suggest why the disease could not be detected earlier or at the time of entry, it shall not be deemed to have arisen in service.

18. In view of the foregoing, the petition is dismissed. No order as costs.

A.K. MATHUR
(Chairperson)

M.L. NAIDU
(Member)

New Delhi
March 16, 2010.